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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|----------------------------|-------------|----------------------|---------------------|------------------|
| 09/413,821 | 10/07/1999 | PHILIP KELLER | 52352-356 | 2466 |
| 20277 | 7590 | 07/05/2005 | EXAMINER | |
| MCDERMOTT WILL & EMERY LLP | | | NGUYEN, DUNG X | |
| 600 13TH STREET, N.W. | | | | |
| WASHINGTON, DC 20005-3096 | | | ART UNIT | PAPER NUMBER |
| | | | 2638 | |

DATE MAILED: 07/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/413,821

Applicant(s)

KELLER, PHILIP

Examiner

Dung X. Nguyen

Art Unit

2631

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 - 10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3 - 9 is/are rejected.
- 7) ☒ Claim(s) 2 and 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

Response to Arguments

1. Applicant's arguments filed on September 13, 2004 have been fully considered and are persuasive. The previous rejection(s) of the Office action filed on June 16, 2004 has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of new found reference(s).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claim 1 and 3 – 9 are rejected** under 35 U.S.C. 103(a) as being unpatentable over Vijeh et al. (US patent # 5,467,369), and further in view of Aqnthony Richard Skillin (UK patent application GB # 2 094 105 A)

Regarding claim 1, Vijeh et al. discloses a communication device having an output driver for driving an output terminal to provide data transmission via twisted pair wiring (column 2, line 66 to column 3, line 11. from the preceding information, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to recognize and implement Vijeh et al. to apply for a transceiver having an output driving an output terminal to provide data transmission via residential twisted pair wiring without effort).

Vijeh et al. differs from the instant claimed invention that it does not discloses the steps of:

- Setting a DC level at the output terminal for supplying a transmit signal of a prescribed level to the residential twisted pair wiring (inherently taught by Skillin);
- Comparing a controlled value representing the DC level with a predetermined threshold level (voltage controller of Skillin performs comparison), and
- Controlling the output driver until the controlled value is equal to the threshold level (voltage controller of Skillin maintains threshold voltage).

However, Anthony Richard Skillin discloses these above steps in page 1, first column, lines 45 – 50, remember, using a DC or AC voltages is just an action for using an appropriated power for a device).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine Vijeh et al.'s teaching and Anthony Richard Skillin's teaching to provide the requirements of the instant claimed invention for controlling the current of the device (Page 1, first column, line 59 to second column, line 78 of UK patent application GB 2 094 105 A).

Regarding claim 3, as followed by the limitations analyzed in claim 1, Vijeh et al. further discloses (figure 25) that wherein the output driver is controlled for a high power level and a low power set at the output terminal.

Regarding claim 4, as followed by the limitations analyzed in claim 1, Vijeh et al. and Antony Richard Skillin differ from the instant claimed invention that they do not show wherein the output driver being controlled to establish an output driver level required by the HPNA specification.

However, setting the output level for any requirement is depending on hand of one of ordinary skill in the art.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to implement Vijeh et al. and Anthony Richard Skillin to show wherein the output driver being controlled to establish an output drive level required by the HPNA specification for fulfilling the limitations of the instant claimed invention without effort.

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Regarding claims 5 - 7, respectively, the limitations are analyzed in the same manner set forth as claim 1.

Regarding claim 8, as followed by the limitations analyzed in claim 7, Vijeh et al. further discloses (figure 8) an input circuitry (80', 120, 122, 124) for receiving an incoming signal.

Regarding claim 9, as followed by the limitations analyzed in claim 8, Vijeh et al. further discloses that wherein the output drive control system further comprises a multiplexer for connecting the input circuitry to the comparator circuit during a normal mode of operation, and for supplying the controlled signal representing the DC level during an output drive level control mode of operation (column 10, lines 20 - 23).

Allowable Subject Matter

4. **Claims 2 and 10 are objected** to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Contact Information


5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dung X. Nguyen whose telephone number is (571) 272-3010. The examiner can normally be reached on Monday through Friday from 8:00 AM to 17:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Vanderpuye Kenneth N. can be reached on (571) 272-3078. The fax phone numbers for this group is (571) 273-3021.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2600.

DXN

June 24, 2005


KENNETH VANDERPUYE
PRIMARY EXAMINER